



D.C. Real Estate Board
H.R. Crawford, Chairman

D.C. REAL ESTATE BOARD SPECIAL REPORT ON **Agency Disclosure Guidelines for Licensees & Consumers** **What You Should Know About Brokerage Relationships**

When first meeting a client, DC real estate agents are required by law to disclose if they represent the buyer or the seller. They may represent both the seller and the buyer in a real estate transaction, but they must still disclose the brokerage relationship.

What's the Difference between a Client--and a Customer?

When dealing with a real estate licensee in a real estate transaction, you are usually either a client or a customer of that licensee. A licensee is a person licensed by the District of Columbia Real Estate Board to practice real estate brokerage, sales or property management in the District of Columbia.

- *A client is someone who has formed a contractual brokerage relationship with a licensee (this type of licensee is known as a broker; other licensees, known as salespersons, assist the broker), and the licensee is the client's agent*
- *A customer is someone who does not have a brokerage relationship with the licensee*

When acting as an agent, a licensee has certain duties and obligations. The basic duties are defined in District of Columbia law (see the Real Estate Licensure Act), and additional duties can be created by a brokerage agreement with a client. The licensee you choose as your agent is required to represent your interests. An agent owes first allegiance to their client. Brokerage relationships with an individual licensee also bind the other licensees of the same real estate company.

Licensees owe their Clients Standard Duties. **What are those duties?**

- ☐ Perform the terms of the brokerage agreement
- ☐ Promote the client's best interest by seeking a transaction acceptable to the client
- ☐ Provide financial accounting
- ☐ Disclose known material facts about the property or the transaction
- ☐ Exercise ordinary care
- ☐ Maintain client confidentiality, unless the information is required by law to be disclosed or the client consents to disclosure.

Licensees also owe their Customers Standard Duties. What are those duties?

- ☐ Treat all parties honestly and do not knowingly give false information
- ☐ Inform all customers and potential customers of the nature of their brokerage relationships, if any
- ☐ For what you are aware, disclose material adverse facts pertaining to the physical condition of the property
- ☐ Comply with the laws, particularly the Fair Housing laws (see DC Human Rights Act)

There are limits on what an agent must tell a customer. Customers may wish to look to other sources for information important to their decisions (e.g., a real estate attorney).

Real Estate Agents Represent Two Categories: Seller or Buyer.

What is a Seller's Agent?

If you are selling property or want to lease it, and you sign a listing agreement with a licensee, the licensee and their brokerage firm (the listing company) become your agent—they represent you and your interests. You become their client.

Salespersons who work for other companies act as agents of the listing company by showing your property to prospective buyers or tenants. These agents are required to seek a transaction with terms acceptable to you, and they owe you the standard agent duties a licensee owes a client. These agents are known as "subagents".

If you are a prospective buyer or tenant dealing with a licensee who represents the seller or landlord, remember that you are a customer of that licensee and not a client. A seller's agent can still provide valuable services to customers—showing the property, preparing and presenting any offers or counteroffers, comparing financing alternatives, and disclosing known adverse material facts about the physical condition of the property. All agents in a transaction must treat all parties honestly and must not knowingly give false information to any parties, *but the seller representative's highest duty is to the seller, not the purchaser.*

DC Agency Disclosure: Guidelines for Licensees & Consumers / 2 of 2

What is a Buyer's Agent?

Prospective buyers and tenants have realized in recent years that they want to have a licensee represent them exclusively in a real estate transaction. They do this by creating their own brokerage relationship, in writing, with a licensee who becomes their agent and owes them the duties of a standard agent.

A representative for the prospective buyer or tenant can freely advise the buyer-client about the property. A seller dealing with a buyer's agent should remember that in this relationship, the seller is the customer and the licensee is working for the buyer.

In many cases, the seller's listing agent will share the commission with the buyer's representative, but that does not diminish the buyer representative's obligation to the buyer.

Dual Brokerage Relationships

The increasing popularity of buyer representation has increased the number of transactions where a licensee will represent both parties to a transaction. This happens, for example, when a buyer or tenant client of a real estate company wants to buy or rent one of the properties that the same real estate company is listing for a seller or landlord client. The duties of loyalty to both clients are created through the company, even if different licensees from that company are working separately with the two clients.

In dual brokerage relationships, there are two ways for the transaction to proceed:

Option 1: Standard Dual Representation

District of Columbia law allows a licensed real estate firm or broker to represent both sides of a real estate transaction, as long as all parties give consent. Because the company has a legal obligation to represent both parties, but may know valuable, yet confidential information about the other party, there are limits on what the company or its licensees may do in dual representation cases in DC:

Neither the company nor its licensees may disclose confidential information about the other party, such as whether the seller will take a lower price, or the buyer will pay a higher price. Generally, information about the motivations of the parties must be kept confidential.

Option 2: Designated Representation

If all the parties agree, the real estate company that acts as a dual representative can designate one of its licensees to represent the seller (or landlord), and a second licensee from the company to represent the buyer (or tenant) in the same transaction. A supervising broker in the company will oversee the transaction, and that supervising broker (and the company) will still be the dual representative of each party. However, each of the designated representatives will be able to offer full service to his or her assigned client.

The supervising broker must not disclose confidential information to one party about the other party. The designated representatives must not share confidential information with each other (they share it with the supervising broker). But when working with their individual clients, each designated representative is free to gather important information from outside sources, free to help with negotiations, and will be thinking first of their client's needs and wishes.

You, as a consumer, are not required to agree to either of these dual representation situations outlined in Option 1 or Option 2. If you refuse the dual agency relationship or designated representative relationship, the real estate licensee is free to choose which party to represent, and the other party is free to arrange other representation for that transaction.

In the District of Columbia, there are three common real estate transactions involving the licensee/brokerage company. They will either represent the:

- ☐ Seller
- ☐ Buyer, or
- ☐ Both—as a dual agent

—and it is important for you to understand which relationships involve your transaction.

This document provides some of the information about the law of agency disclosure in DC. Consult the law to get more specific information on the terms and requirements of any brokerage agreement or other contracts. Consult the law or a real estate attorney if you have questions regarding any specific situation. For more information, consult the law, or contact, DC Real Estate Board, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, NE, 7th Floor, Washington, DC 20002. Email: schanolia.barnes@dc.gov or leon.lewis@dc.gov

Visit the Board's website to verify licensure of real estate agents:

www.dcr.org